

# **Shelby County Board of Commissioners**

## **Juvenile Court Ad Hoc Committee Preliminary Report May 23, 2007**

### **Shelby County Board of Commissioners**

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# Introduction

The Ad Hoc Committee on Juvenile Court of Memphis and Shelby County was formed to examine the operation and effectiveness of the Juvenile Court of Memphis and Shelby County system in its totality (*Transcript, Juvenile Court Ad Hoc Committee, November 29; Ad Hoc Committee Chairman's letter, November 28*). The committee desired to answer three fundamental questions:

- Are we succeeding in rehabilitating juvenile offenders or does our system emphasize simply “processing” these children?
- Are we succeeding at providing the most favorable outcomes for children affected by paternity, child support, dependency and neglect proceedings?
- Are we succeeding at providing timely and efficient conclusions for families of juvenile offenders and their victims?

There is no doubt that there are dissenting opinions about the complete answers to these questions and others that have arisen throughout the study of Juvenile Court of Memphis and Shelby County. However, at a minimum, the hours of testimony, public hearings and literally thousands of pages of documentation support the need for improvement in some areas of the Juvenile Court of Memphis and Shelby County. Many of the specific facts surrounding the need for improvement and the recommendations of the committee are presented in the subsequent pages of this report.

In conducting this study, the committee held 12 formal meetings (*See Appendix A, Ad Hoc Committee Meeting Schedule*); 6 public hearings in districts 1, 2, 3 and 5 (*See Appendix B, Public Hearing Schedule*); heard testimony from 17 juvenile justice and child welfare practitioners, including Juvenile Court of Memphis and Shelby County representatives (*See Appendix C, Juvenile Justice and Child Welfare Practitioners*); requested and received 11 County Attorney opinions (*See Appendix D*); reviewed

thousands of pages of research; and established a “hotline” and web page for public comments. None of this includes research conducted by individual commissioners or attention given to specific constituent concerns.

On March 14, 2007, the County Commission approved a resolution selecting and authorizing the National Center for State Courts (NCSC) to conduct an independent and objective analysis of Juvenile Court of Memphis and Shelby County. NCSC was chosen through a Request for Proposals process (*See County RFP # 07-002-49*). Prior to commencing with the RFP process, Juvenile Court of Memphis and Shelby County agreed to participate in the study and preferred that the study be conducted by NCSC (*See Letter from Judge Curtis Person January 31, 2007*)).

The NCSC study will include an in-depth, internal assessment of court operations, customer service, case flow management, management information systems, challenges to timely, efficient and quality case processing, and a review of representative samples of case files. In addition to this thorough study, NCSC will gather information to further refine the other issues of importance to the committee such as disproportionate minority contact, adequacy of legal representation and permanency planning (*See NCSC response to RFP, page 3*). The report is expected in June of 2007.

**Because of the NCSC report, this report is to be considered preliminary.** Once the NCSC report is final, it will be incorporated into this document and finalized. It is worth noting that there are issues addressed in this report that are being studied by NCSC. If inconsistencies appear between this report and the NCSC report, those will be noted and the reasons for the inconsistencies addressed. Conversely, there are issues within this report that are not part of the NCSC study. For that reason, and to bring some closure to this issue, the committee has decided to issue this report now.

Finally, the recommendations contained in this report are just that, recommendations. The County Commission is fully aware of the extent of its authority (or lack thereof) to compel Juvenile Court of Memphis and Shelby County to implement these

recommendations. As one will see, it is noted after each recommendation what process is necessary and which body has the authority to implement these recommendations. Nevertheless, it is the responsibility of the County Commission as the funding source for Juvenile Court of Memphis and Shelby County to assess the impact of the tax dollars spent, report to the taxpayers, and take all necessary and appropriate steps to ensure adequate services are being provided in an equitable way. That is the context in which this report is submitted.

## Cost of Reforms

The committee recognizes that many of the recommendations, in fact most of them, will have some cost associated even if it is negligible. However, because many of these recommendations are related to significant structural and philosophical shifts in the way the court operates, determining the cost will require the involvement of the court. The committee recommends that representatives of Juvenile Court of Memphis and Shelby County, the County Commission and the Department of Finance and Administration meet and analyze the cost of implementing these recommendations. Like Operation Safe Community, the committee sees these recommendations, along with the forthcoming recommendations of the National Center for State Courts, as a multi-year, multi-phase project that will require consideration as a part of the regular budget proposals submitted by the court to the commission annually. It should also be noted that many of these proposals will be eligible for state and federal funding, therefore strategies for securing those funds should be developed.

Finally, the committee recognizes that the court must agree to implement many of these recommendations and submit them as a part of their budget request. Committee members are generally prepared to take steps to fund these recommendations as a part of a multi-year program to improve the court if the court is willing to implement them.

## Sources & References

As appropriate, this report references the sources of information to support the recommendations made. A complete bibliography is not included in the report. However, each document referenced is available for review or reproduction in the County Commission office on the 4<sup>th</sup> Floor of 160 North Main Street.

Some references refer the reader to web sites where additional research can be conducted. Additionally, while generally only one reference is made to support a particular point, in most cases there are multiple references that could have been cited. For the sake of brevity and simplification for the reader, only the most relevant sources have been included.

## Court Structure

At the heart of this review of Juvenile Court of Memphis and Shelby County is the debate over the appointment of a second judge by the County Commission. The current court structure has been in place since 1967 and includes one administrative judge supported by 7 Referees and both administrative and judicial staff. The Referees, along with 42 other management level positions, are appointed solely by the administrative judge (*See Memphis and Shelby County Fact Book, Bate Stamp 55-134*). The Referees hear the overwhelming majority of cases, but under state law their decisions are not final until the judge signs the order. After a hearing before a Referee, litigants have the right to a *de novo* rehearing by the elected judge (*County Attorney Opinion No. 07-011*).

Among the 49 positions appointed by the judge are the Juvenile Defender, the Chief Probation Officer and the Guardian Ad Litem Chief Counsel. All three are housed at the Juvenile Court of Memphis and Shelby County. The juvenile prosecutor is housed at Juvenile Court of Memphis and Shelby County, but answers directly to the District Attorney General and is paid from the budget of that office. Additionally, the judge oversees the juvenile detention center (*See Memphis and Shelby County Fact Book, Bate Stamp 323-324*).

This model is fairly unique in that the majority of juvenile and family courts nationally have multiple judges, though most also employ Referees. Model national courts do not generally appoint the number of top-level staffers, especially the Juvenile Defender, Chief Probation Officer and Guardian Ad Litem Chief Counsel, that the Juvenile Court of Memphis and Shelby County in Shelby County appoints (*See National Center for State Courts [www.ncsconline.org](http://www.ncsconline.org); Office of Juvenile Justice and Delinquency Prevention, [www.ojjdp.gov](http://www.ojjdp.gov) ; National Council of Juvenile and Family Court Judges, [www.ncjfcj.org](http://www.ncjfcj.org)*).

The appearance of the potential for conflicts of interest, minimal accountability and an unprecedented amount of power wielded by a single judge as compared to other courts are some of the reasons the majority of committee members make the following

recommendations for structural changes in Juvenile Court of Memphis and Shelby County.

**Recommendation 1:** Replace four Referees with four elected judges

**Responsible:** Tennessee General Assembly

**Rationale:** As previously stated, the majority of juvenile and family courts in America operate with multiple judges. Under our system, the sole elected judge plays primarily an administrative role, hiring almost 400 administrative positions within the extensive Juvenile Court bureaucracy, while unelected Referees hear the overwhelming majority of cases. These Referees make important decisions regarding the liberty of juveniles and the parental rights of their custodians. They are appointed by the judge only and are therefore not accountable to the public or any publicly-elected body. The Referees' decisions are not final but must be signed by the elected judge to be final orders. Litigants are entitled to a rehearing of the Referees' decisions before the elected judge, but in Shelby County the common practice is to appoint another attorney, often another Referee, as a "Special Judge" for the purpose of conducting the rehearing. Thus, by having so many cases heard in the first instance by unelected Referees, the current system creates an unnecessary extra layer of review before a final order is issued, without providing litigants as a practical matter with a review by a fully qualified elected judge (as is contemplated by the Tennessee Constitution).

If the legislature agreed to create these four additional divisions, the electorate would choose those individuals with the power to incarcerate our children or take our children from their parents. These four new judges, coupled with the existing judge and the disputed judgeship, would total six elected judges. By removing four Referees, three Referees would remain for the sole purpose of dealing with child support matters (*See Child Support recommendations*). This would increase the number of adjudicatory officials by one, which is justified in light of subsequent recommendations for additional



administrative staff, which should increase the number of child support cases ready to be heard, thereby requiring more hearing officers.

Throughout the debate about a second Juvenile Court judge, many have been concerned about the cost of a judge who makes \$140,000 annually versus a Referee who makes \$104,500 annually (*See Juvenile Court of Memphis and Shelby County Fact Book Bate Stamp 416*). Under this proposal, if the three remaining Referees were assigned to child support only, the difference in cost of \$35,000 per judge is absorbed by allowing the state and federal governments to pick up the cost of the Referees. *See infra, Child Support, Recommendation 1*. In fact, the savings to the county is approximately \$31,500.

The benefits of four elected judges are:

- Greater accountability to the public;
- A limit on the amount of power and patronage available to a single judge;
- A small savings to taxpayers;
- Additional hearing officers to hear cases processed by an increased number of administrative staff;
- Increased efficiency because the step of the judge having to approve orders of Referees is largely removed; and
- Increased due process because a greater percentage of litigants will get the rehearing review by an elected judge contemplated by the Tennessee Constitution.

**Recommendations 2 through 4** all relate to the concern of an actual, potential, or perceived conflict of interest regarding the far-flung supervisory powers of the current single Juvenile Court Judge. An ethical dilemma exists when the Juvenile Court of Memphis and Shelby County judge has authority over the Referees who determine the disposition of the cases; the Juvenile Defender who represents the defendant; the juvenile detention center where the juvenile would be held if convicted; the Guardian Ad Litem Chief Counsel who chooses who represents the child; and the probation office that will

oversee him when he is released. Under these circumstances, it is hard to assure the public that the system meets the standards of Canon 2 of the Judicial Code of Conduct, which require a judge to conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**Recommendation 2:** Remove Juvenile Defender from the budget of Juvenile Court of Memphis and Shelby County and place under the Public Defender's office.

**Responsible:** County Commission (*It should be noted that Juvenile Court of Memphis and Shelby County do not believe the County Commission has the authority to do this.*)

**Rationale:** The job of the Juvenile Defender is to provide a vigorous defense for a juvenile alleged to be delinquent and whose family cannot afford an attorney. While Ms. Hobbs, the current Juvenile Defender, is highly regarded for the work she does, the appearance of the potential for impropriety exists when the judge of Juvenile Court of Memphis and Shelby County hires and ultimately supervises the Juvenile Defender. This opinion is widely held in the legal community.

Historically, the Juvenile Defender was in the Public Defender's office and the juvenile prosecutor appointed by the Juvenile Court Judge of Memphis and Shelby County. According to Public Defender Robert Jones, around 1978 then-Judge Kenneth Turner had the Juvenile Defender's position moved under his supervision. Shortly after taking office, District Attorney General Bill Gibbons brought the juvenile prosecutor under his supervision for the same ethical concerns the committee points to in regard to the Juvenile Defender (*Transcript, Juvenile Court Ad Hoc Committee, January 3, 2007*).

More recently, a County Attorney's opinion (*See County Attorney Opinion No. 07-024*) stated that "there is no authority found that authorizes the Juvenile Court of Memphis and

Shelby County, or any other court in this state with juvenile court jurisdiction or otherwise, to employ an attorney as part of the court's personnel to provide legal representation for persons under the court's jurisdiction." According to the County Attorney, that duty, by law, is given to the Public Defender, but may also be carried out by private attorneys appointed by the court and paid by the state.

It should be noted that in anticipation of this recommendation by the committee, Juvenile Court of Memphis and Shelby County has proposed removing responsibility for trying cases from Ms. Hobbs, but allowing her to remain a Juvenile Court of Memphis and Shelby County employee for the purpose of coordinating the juvenile panel, which represents juveniles alleged to be delinquent (*See Transcript, Juvenile Court Ad Hoc Committee, April 2, 2007*). While it is appreciated that the court agrees with the ethical concerns of the committee, under its proposal, Ms. Hobbs would still be involved indirectly with the defense of juveniles, but be paid the same salary though her responsibilities have been reduced. It would seem the most reasonable approach would be to maintain all of the responsibilities Ms. Hobbs currently has at the same pay, but move them under different and more ethically sound supervisory authority.

**Recommendation 3:** Remove from the Juvenile Court Judge of Memphis and Shelby County all hiring, firing and supervisory authority over the probation officers and their staff.

**Responsible:** County Commission (*Juvenile Court of Memphis and Shelby County disagree that the County Commission has the authority to implement this recommendation*)

**Rationale:** Like the Juvenile Defender, a potential conflict exists when the Juvenile Court of Memphis and Shelby County judge appoints, supervises and pays the Chief Probation Officer and his staff. Among a probation officer's duties is to bring to the court's attention violations of probation conditions and to make independent recommendations regarding the disposition of individual cases. The Tennessee Judicial

Ethics Committee Advisory Opinion No. 98-5 explicitly states that such authority leads to a judicial ethics appearance of impropriety on the part of the Juvenile Court of Memphis and Shelby County judge.

Like the situation with the Juvenile Defender, the County Attorney issued an opinion (*See County Attorney Opinion No. 07-032*) that appointment of the Chief Probation Officer is the responsibility of the county legislative body according to Chapter 216 of the Private Act of 1967 that created the Juvenile Court of Memphis and Shelby County model we have in Shelby County today. The County Attorney goes on to state that “this appointment has historically been done directly by the Juvenile Court of Memphis and Shelby County Judge for reasons unknown to the County Attorney’s Office.”

In terms of location for the probation office, Juvenile Court of Memphis and Shelby County, the Administration and the County Commission should consider various options to determine the appropriate supervisory authority for the probation operation. However, appointment of the Chief Probation Officer by the County Commission should commence prior to the beginning of the 2008-09 fiscal year.

**Recommendation 4:** Remove from the Juvenile Court Judge of Memphis and Shelby County all hiring, firing and supervisory authority over the juvenile detention center.

**Responsible:** County Commission

**Rationale:** Again, a potential conflict of interest exists when the judge sentencing individuals to detention is also responsible for administering the detention facility. For example, the judge may need to decide issues which may arise regarding treatment and conditions at the facility.

In 2001, the Tennessee Attorney General opined (*See Tennessee Attorney General Opinion No. 01-116*) that the state constitution forbids a judge from holding another

office of “trust or profit.” (*See Const. Art. VI, 7*) The Attorney General further stated that in accordance with the decision in *State ex rel v. Thompson*, 246 S.W. 2d 59 (1952) that offices to be held by a judge are incompatible where one office has the authority to appoint, remove and supervise the other. Because the judge of Juvenile Court of Memphis and Shelby County supervises the detention center and its staff, he is the administrator of the detention center and the Judge of the Juvenile Court of Memphis and Shelby County. By effectively holding these two separate positions – one being judge, which holds authority over the head of the detention center – the judge “wears two hats” that in the committee’s opinion are incompatible as described by the State Attorney General in the above referenced opinion.

To be fair, *Thompson* should be distinguished from Shelby County in that the Private Act creating Juvenile Court authorizes the judge to perform judicial and administrative duties. But, the concerns raised in *Thompson* are nonetheless valid in this instance. However, legislation may need to be considered in addressing this issue in the future. Also, County Attorney Opinion No. 07-024 addresses this issue and makes recommendations.

Like the probation office, the appropriate supervisory authority within county government should be determined by the Administration, the County Commission, and the Juvenile Court itself.

**Recommendation 5:** Divide responsibilities (among both judges and Referees) between (a) delinquency cases in which juveniles are charged with criminal acts and (b) child support, child custody and dependency cases such as abuse, neglect and abandonment

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** Many attorneys who practice regularly in Juvenile Court have suggested that if the Court is to have two judges, it would help the administration of

justice to have one judge with developed expertise in criminal law-related issues handling delinquency cases and another with developed expertise in child custody, dependency and similar issues. However, this recommendation may conflict somewhat with the next recommendation of having one judge deal with cases concerning one family. Since the “criminal-civil” divide was suggested at a time when only two judges were contemplated, and the “one judge/one family” suggestion is more feasible with multiple judges as contemplated in Recommendation 1, it might be wise to defer this Recommendation pending implementation of Recommendations 1 and 6.

**Recommendation 6:** Institute a policy of One Family, One Judge specific to Juvenile Court of Memphis and Shelby County

**Responsible:** Juvenile Court of Memphis and Shelby County (*Juvenile Court of Memphis and Shelby County has stated that it would require legislative approval. This is not the case. Davidson County already uses One Family/One Judge*)

**Rationale:** It is widely known in the juvenile justice community that a family that appears before a juvenile or family court is likely to appear more than once. It could be the same family affected by on-going child support matters or a family involved in dependency affecting one child and a sibling brought before the court on delinquency charges. Regardless of the specific circumstances, families with the kinds of problems handled by Juvenile Court of Memphis and Shelby County need consistency in decision-making, a judge or Referee who is familiar with the family history and decisions that insure the family receives the services it needs to rehabilitate the child and the family (*See Carol Flango, Victor Flango, and Ted Rubin, How are Courts Coordinating Family Cases?, Chapter 2, “One Family/One Judge and Its Variations,” Pages 23-29*).

One family, one judge brings together family-related cases of different types so that they may be heard by the same judge. This allows the judge to make more informed decisions because he or she is familiar with all of the circumstances of that family. It has been

shown that families are more likely to comply with court orders when they know they will be appearing before the same judge. In many cases, the trauma of court appearances is reduced because several matters can be handled at once. Families generally feel like they are better understood and judges can more effectively coordinate the services of multiple agencies that need to be involved with the family.

Among the regular complaints heard by the committee at public hearings were that numerous court appearances were necessary before different Referees, the impression of a lack of concern by the Referees and an inability to get the help from the court that some of these families felt they needed (*Transcripts, Juvenile Court Ad Hoc Committee Public Hearings, December 2, 2006, January 23, 2007*) Moreover, the recidivism rate of juvenile offenders in Shelby County in 2006 was 54.79% (*See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 326*). This may be indicative of the necessity for the judges and Referees to be more involved in family matters of these juveniles as a means of reducing recidivism.

In fairness, scheduling under a one family, one judge model is complex. That is why the committee recommends modifying the approach to fit the local situation. Many jurisdictions across the country, including Davidson County, utilize the system in part, but most experts recognize that situations arise in which the same judge cannot hear every matter.

The committee also recognizes that this is an internal decision of the court and not a matter the County Commission can compel the court to do. It is our request that at a minimum the court experiment with this format to determine if outcomes for children and families can be improved.

**Recommendation 7:** Conduct a thorough review of salary classification, job qualifications, job advertisements and job descriptions in conjunction with Shelby County Human Resources and the General Government, Personnel/Fringe Benefits, Equal

Employment Opportunity and Notary Committee of the  
Shelby County Board of Commissioners

**Responsible:** Department of Human Resources, Shelby County  
Government; County Commission

**Rationale:** At the January 3, 2007 Ad Hoc Committee meeting, the policies and procedures relative to hiring, promotion and pay increases at Juvenile Court of Memphis and Shelby County were called into question. Since that time, numerous employees and former employees have complained to Commissioners that they believe the policies are not fair, equal and consistent. To ensure that county policy is being followed and that fairness exists in hiring, firing, promoting and increasing pay, the committee is calling for a review of the salary classifications, job qualifications and job descriptions of all positions in the Juvenile Court of Memphis and Shelby County position control budget.

**Recommendation 8:** Establish clear, broad career advancement opportunities for court personnel

**Responsible:** Department of Human Resources, Shelby County  
Government; Juvenile Court of Memphis and Shelby  
County

**Rationale:** This recommendation is the next logical step after completing the review of salary classifications, job descriptions and job qualifications under Recommendation 7. For the same reasons described above, employees need to fully and clearly understand what employment opportunities exist and how to take advantage of them. These recommendations will clearly help to raise morale of Juvenile Court of Memphis and Shelby County employees and establish clear advancement opportunities.



**Recommendation 9:** Establish clear performance expectations and methods for measuring performance of Juvenile Court of Memphis and Shelby County staff

**Responsible:** Department of Human Resources, Shelby County Government; Juvenile Court of Memphis and Shelby County

**Rationale:** Associated with Recommendations 7 and 8, this recommendation is designed to ensure that employees in similar job classifications and with similar job qualifications have similar performance measures. Also related to Recommendation 8 is the fact that performance measures are tied to upward mobility. Employees must have clear expectations in order to meet goals and objectives and have an equal opportunity for advancement.

**Recommendation 10:** Establish a Family Court Taskforce

**Responsible:** County Commission, Operation Safe Communities and Courts

**Rationale:** Since making this recommendation, it has come to the attention of the committee that Strategy 14 of the Operation Safe Community (*See Operation Safe Community Strategic Plan, Page 43*) initiative calls for an “assessment of the judicial system of Shelby County.” The initiative recognizes what the committee recognized that the “current local fragmented court structure” fails to address the needs of families in crisis.

Specifically, if created, a Shelby County Family Court would put domestic violence, child support, divorce, delinquency, dependency, neglect, custody and other family matters under one “roof.” Currently, these cases are spread among Juvenile Court of Memphis and Shelby County, Chancery Court, General Sessions Court, and Circuit

Court. A cohesive family court could provide an opportunity for a more structured approach to rehabilitating families in crisis, be a more user-friendly court for litigants and attorneys, and be staffed by hearing officers and administrators with greater expertise in family matters.

It should be noted that there is a child support agreement between the juvenile, chancery and circuit courts in Shelby County which can be found in the Local Rules of Circuit Court, Appendix 2. This should be taken into consideration by the task force.

Financially, it is possible that the county could benefit from such an arrangement. The state legislature would have to authorize the family court and because of the kinds of issues handled, the court would be a state court, thus taking much of the financial burden off of local government.

Because of the initiative already underway by Operation Safe Community, the committee would request involvement from the County Commission in this review and analysis.

*(It should be noted that many jurisdictions across the country utilize family courts. For more information, go to [www.ncsconline](http://www.ncsconline) or [www.ncjfcj.org](http://www.ncjfcj.org).)*

## Child Support

The study of Juvenile Court of Memphis and Shelby County initially grew out of concern for a backlog of child support cases. Though that number is disputed (*See Transcript, Shelby County Board of Commissioners Meeting, November 6, 2006*) there is no doubt that a significant backlog exists, and that the overwhelming majority of complaints from the public were related to child support matters (*See Transcripts, Juvenile Court Ad Hoc Committee Public Hearings*).

To some extent it is reasonable to expect that in a system that handles far more child support matters than any other jurisdiction in the state, there are likely to be a greater number of complaints. In 2006, Juvenile Court of Memphis and Shelby County had 115,319 child support cases (*See Comparative Analysis of Local IV-D Programs in Tennessee, Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 346*). Of those cases, only 52.38% were under court order, which is required to enable a custodial parent to receive child support. Among those under court order, there was a collection rate of 53.57%, which totaled \$100,999,274. (*Id.*)

Citizens who attended public hearings, wrote letters and e-mails or called commissioners, regularly complained of confusion about the process for establishing paternity and seeking child support. On many occasions, litigants received conflicting information from staff or had files lost and paperwork requiring them to begin the tedious process again. In one case, the disposition of a father's case was wrongly recorded and required a review of the court audio to establish the correct disposition (*See Transcript, Juvenile Court Ad Hoc Committee Public Hearing, February 1, 2007.*) Multiple citizens apparently received legal advice from administrative staff who did not possess a law degree or license. In most instances, citizens who commented complained of less than friendly treatment from Juvenile Court of Memphis and Shelby County staff.

Recognizing that issues exist in this largely pro se court, Judge Person created the position of non-custodial advocate to assist the non-custodial parents with the navigation of the court. As of November of 2006, Mr. Walker, the non-custodial advocate had assisted 1,000 litigants (*See Transcript Juvenile Court Ad Hoc Committee, December 13*). Many witnesses at the public hearings praised Mr. Walker for his much-needed assistance, and this sort of “ombudsperson” approach should be duplicated. To clarify, his position does not include assistance to custodial parents in obtaining child support. Custodial parents, if they do not have an attorney, are assisted by attorneys and case workers in the child support division. In either instance, these parents are not represented by counsel, unless they hire a private attorney.

At the time this report was drafted, Juvenile Court of Memphis and Shelby County staff had indicated at numerous points that the child support division needed additional staff and attorneys to process more cases (*See Transcript Juvenile Court Ad Hoc Committee, January 31, 2007*). Responding to that request, the County Commission adopted a resolution in support of \$1 million from the state to hire 10 case workers and 2 staff attorneys and 2 supervisors. Juvenile Court of Memphis and Shelby County had indicated that this was a critical need and the amount they had requested three years in a row from the state. Commissioners wrote letters, called legislators and in April drove to Nashville with the blessing of the court to lobby legislators. However, the Commission was unaware that Judge Person, on March 12, requested \$6.5 million from the state and later threatened to cancel the court’s contract with the state (*See Judge Person Letter, April 16 2007.*) [NOTE: Judge Person rescinded conditional termination by letter on April 26] If in fact the \$6.5 million requested is a legitimate figure, then it undoubtedly underscores the failings of the court’s child support system, which the following recommendations strive to correct.

**Recommendation 11:** Move at least 2 Referees to hearing child support cases only to put the Referees’ compensation on the federal and state payroll.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** As referenced previously, it is the committee's preference to have elected judges. However, the backlog of child support cases (*See Comparative Analysis of Local IV-D Programs in Tennessee, Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 346*) warrants Referees whose priority is hearing child support matters. Designating Referees as child support only would make them eligible to be paid by the state and federal governments, rather than the county. Referees who hear child support matters are eligible, but judges are not (*See Transcript Juvenile Court Ad Hoc Committee, January 31, 2007, Testimony of Assistant Department of Human Services Commissioner Mike Adams*). The savings from paying these Referees with state and federal dollars would absorb the increase in salaries of the four elected judges previously proposed (*See Structure, Recommendation 1.*) It should be noted that the court's only voiced objection to such a model is that cost allocation requirements are stringent and cumbersome (*See Transcript Juvenile Court Ad Hoc Committee, April 2, 2007*). It should be further noted, however, that 66% of the salaries of Referees are currently paid by the state and 34% by the county, so cost allocation is already occurring (*See Transcript Law Enforcement Committee, November 6, 2007, Testimony of Mitchell Morgan*).

**Recommendation 12:** Request \$1,000,000 from the state for Juvenile Court of Memphis and Shelby County to get the necessary child support workers.

**Responsible:** Tennessee General Assembly, State Department of Human Services, County Commission and Juvenile Court of Memphis and Shelby County

**Rationale:** As referenced, the court had led the Commission to believe that \$1 million in additional funds would have a significant impact on the court's ability to process cases, issue orders and collect a higher percentage of child support. While it is

clear to us that the need for administrative staff exists, to what extent has become unclear. However, the Commission will honor its position and continue to request that the state provide the necessary funds to adequately address the many needs in Shelby County's child support operation (*See Commissioner Carpenter Letter to Commission Gina Lodge, May 2, 2007*)

**Recommendation 13:** Request DHS sponsor a study of child support operation to include review of costs and benefits of turning operation back to the state.

**Responsible:** State Department of Human Services

**Rationale:** On January 31, 2007, Assistant Department of Human Services Commissioner Mike Adams appeared before the committee. Adams agreed that additional administrative staff were needed, but said other efficiencies, training of workers and management processes appropriate for the child support operation could only be determined through a review by an outside professional firm (*See Transcript, Juvenile Court Ad Hoc Committee, January 31, 2007*). Adams stated that the most effective child support operations hire outside firms to consult, train workers and provide automation solutions, rather than privatize the operation. Adams, both on the record and in a subsequent letter to Commissioner Carpenter, indicated that the Department of Human Services would pay for such a study. Consequently, the committee chose not to include a review of the child support operation in the study being conducted by the National Center for State Courts. Moreover, it would seem most prudent to conduct such a study before suggesting that the state fund an additional \$6.5 million or resume control of the operation (*See Commissioner Carpenter Letters to Commissioner Gina Lodge, April 25, 2007 and May 2, 2007*).

**Recommendation 14:** Hold ongoing public meetings to educate the public for free about child support process.

**Responsible:** Juvenile Court of Memphis and Shelby County, Volunteers from the local Bars

**Rationale:** In brief, the transcripts from the public hearings demonstrate that there is substantial confusion about the child support process at every level. This recommendation is a cost-effective way that the court could provide educational services and assistance to the general public at a time more convenient for working people. While some might argue that the cost of overtime for employees would be prohibitive, our suggestion would be to partner with the Department of Human Services, the Bar associations and universities. Additionally, nonexempt court staff could be given compensatory time for volunteering to staff these meetings.

**Recommendation 15:** Redefine imputed income because the current \$3030.45 per month for men and \$2249.08 for women is too high for many customers of Juvenile Court of Memphis and Shelby County.

**Responsible:** Federal and State Departments of Human Services

**Rationale:** Through public hearings and committee meetings, it came to our attention that many fathers and some mothers could not verify their income. While it is possible some were attempting to avoid paying child support, many had difficulty maintaining a job, others were self-employed, and still others had multiple but small sources of income. Because they were unable to verify their exact income to the court, the Referees used federal guidelines for income. A father assumed to make \$3030 monthly would gross over \$36,000 annually, which is near the median income in Shelby County. Many of Juvenile Court of Memphis and Shelby County's customers do not make that money, therefore cannot pay their child support and amass thousands in child support arrearages. In these cases, many are found in contempt, their drivers licenses are taken and bank accounts frozen. This problem interacts with that described below in Recommendation 6.

**Recommendation 16:** Rescind as counterproductive the policy of taking away driving licenses of those in arrears on child support

**Responsible:** Federal and state government (Both legislative and regulatory agencies)

**Rationale:** A number of fathers attended our public hearings to state that when they could not pay their child support, they were found in contempt and their drivers' licenses were revoked. While the committee appreciates the "get tough" posture of the state toward dead beat dads, taking away a drivers license prevent the father in many cases from working, which means he is even less likely to be able to pay. Not only is the father hurt in this situation, but the children fail to receive any assistance, which is the ultimate objective. The committee urges the state and federal governments to rescind the policy and explore other alternatives to enforce child support payments.



## Delinquency & Status Offenses

According to Juvenile Court of Memphis and Shelby County data, nearly 10,000 delinquency cases were adjudicated in 2006 (*See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 447*). Of those, 86% of the juveniles in those cases were African-American even though only 50% of the residents of Shelby County are African-American. These facts indicate a failure to adequately address Disproportionate Minority Contact as required by the federal government.

While this disproportion might simply be due to a higher rate of delinquency among African-American juveniles in Shelby County, perhaps caused by greater socioeconomic impairments, other data from the Court suggest that this is not the only explanation. While the ratio of black to white juveniles entering the Juvenile Court system is roughly 7 to 1 (*See 2005 Juvenile Court Annual Report, p. 22*) -in a county where the population is roughly 1 to 1 - the ratio of those who are transferred for adjudication as adults is roughly 27 to 1 (*See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 905, 908*). While even this disparity might be explained by a higher rate among black youths in committing the most serious types of offenses which trigger processing them as adults, a tabulation of the most serious types of offenses shows a black-to-white ratio of only 16 to 1 (*2005 Juvenile Court Annual Report, p. 26*) Clearly, Disproportionate Minority Contact is a significant problem in Shelby County.<sup>1</sup>

Data provided by Juvenile Court of Memphis and Shelby County also shows that recidivism among juveniles adjudicated delinquent is nearly 60%. In response to a letter requesting the number of delinquents who later commit crimes as adults, District

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<sup>1</sup> John Hall, the head of the Disproportionate Minority Task Force, testified that despite years of meeting with the Task Force, the Juvenile Court leadership has been inattentive to this problem. (Transcript, Juvenile Court Ad Hoc Committee, January 31, 2007). Juvenile Court representatives deny this, citing their numerous efforts in this area. In our view, it is not necessary to resolve this dispute. It is sufficient merely to note it as further evidence of the need to pay attention to what reforms can best address this undeniably significant issue.

Attorney General Bill Gibbons responded that he did not have statistical data, but in his experience “the percentage would be very high.”

Failure to rehabilitate a substantial percentage of juveniles and inability to impact disproportionate minority contact in a meaningful way are among the concerns pointing to the following reform ideas.

*Note: Juvenile Court of Memphis and Shelby County argues that it has impacted DMC because the numbers of juveniles in detention have dropped, which therefore means that fewer minorities are being detained. However, in 2006 the number of juveniles in delinquency cases who were African-American was 86%. In 2005 the percentage was 85% and in 2004 the percentage was 83% (See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 447). The percentage of minorities who come in contact with juvenile court has actually risen slightly.*

**Recommendation 17:** Adopt a county-wide diversion program

**Responsible:** Tennessee General Assembly; Juvenile Court of Memphis and Shelby County; Local Law Enforcement; Public Defender; District Attorney General; and County Commission

**Rationale:** Empirical data from the Annie E. Casey Foundation’s JDAI program demonstrates how alternatives to incarceration, like diversion programs, can successfully rehabilitate offenders, reduce crime rates and save tax dollars (*Stanfield, Rochelle, Overview: Pathways to Juvenile Detention Reform, The JDAI Story, The Annie E. Casey Foundation, 1999, <http://www.aecf.org/KnowledgeCenter/Publications>*). Diversion, in its truest sense, is a non-adjudicative means of dealing with juveniles who commit minor offenses. It often means referral to a community program that can provide punishment, restitution and/or rehabilitation for juvenile offenders without incarceration.

Diversion can be ordered by a judge following a hearing, or informally by another actor in the criminal justice system before the juvenile ever appears in court.

The committee also heard testimony from representative of MARRS, a local diversion program operated by the Memphis Leadership Foundation (*See Transcript, Juvenile Court Ad Hoc Committee, January 17, 2007*) and discussed in detail the merits of Stationhouse Adjustment in Cook County, Illinois and the State of New Jersey (*See Transcript, Juvenile Court Ad Hoc Committee, February 28, 2007*).

In November of 2006, the public learned that the suburban communities of Germantown and Bartlett were operating local diversion programs with the blessing of Juvenile Court of Memphis and Shelby County (*See Bailey, Clay, "Juvenile Court Report Cited" The Commercial Appeal, December 28, 2006*). These programs allowed local law enforcement to provide for the diversion without taking the juveniles down to Juvenile Court. Realizing that the programs violated a state law which requires juveniles to appear at Juvenile Court *before* diversion can occur, Judge Person ordered the communities to end their programs (*See Letter from Judge Person dated October 24, 2006*). Creating greater concern was the fact that Bartlett and Germantown are predominantly white, affluent communities. While not the intent of the municipalities involved, the results of the diversion programs were that suburban juveniles were treated differently than inner-city juvenile offenders in the county. While this disparity is regrettable, it nonetheless seemed that the juveniles who got the diversion had better than normal outcomes.

The fact that diversion works (*See "Alternatives to Detention and Secure Confinement of Juvenile Offenders," Juvenile Justice Bulletin, Office of Juvenile Justice and Delinquency Prevention, September 2005, page 18*) but hasn't been available to all juveniles before coming to Juvenile Court of Memphis and Shelby County, prompted the committee to recommend a county-wide diversion program for juveniles arrested for minor offenses. The full commission adopted a resolution requesting that the legislature change the state law relative to diversion.

Specifically, two pieces of legislation have been proposed. The first modifies the existing law regarding “informal adjustment” by the court (*see TCA 37-10-5*) by stating that in all eligible cases, the court intake officer “shall” consider informal adjustment (*See Rule 14 of Rules of Juvenile Procedure*). This measure attempts to increase the use of informal adjustment by mandating for the first time that juvenile court officials actively consider it wherever it is legally possible.

The other piece of legislation creates a new statutory section providing for so-called “Stationhouse Adjustment.” Stationhouse Adjustment has been discussed in Shelby County since 1999 when then-Public Defender AC Wharton, Jr. asked that it be considered by local court and law enforcement officials. In brief, Stationhouse Adjustment allows law enforcement officer or other designees to informally adjust juvenile accused of minor offenses without taking the juvenile to court or creating a criminal record for the juvenile. Officers have very strict guidelines for utilizing the adjustment and juveniles adjusted are tracked to ensure compliance by officers and the juveniles themselves. The program has been successfully used throughout New Jersey and Illinois (*See Attorney General Guidelines for Stationhouse Adjustment of Juvenile Delinquency Offenses, Office of the Attorney General of New Jersey, December 2005, [http://www.state.nj.us/lps/dcj/agguide/directives/directives\\_2005/dir\\_2005\\_4.htm](http://www.state.nj.us/lps/dcj/agguide/directives/directives_2005/dir_2005_4.htm)*)

It should be noted that representatives of Juvenile Court of Memphis and Shelby County agreed to support the legislation on multiple occasions, agreeing both in the general concept and to the specific language of the proposed bill adopted by County Commission resolution. (*See Transcript, Juvenile Court Ad Hoc Committee, January 31, February 14, February 28, 2007*). More recently, however, Juvenile Court personnel have relayed concerns from Judge Person about the legislation. The County Commission has agreed to changes in the proposed legislation to address two of the Judge’s concerns, relating to the issues of statewide application and the exact list of criminal charges for which stationhouse adjustment would be eligible. But the third concern expressed---an objection to having the adjustment decision made by any official outside of Juvenile

Court—is directly at odds with the notion of stationhouse adjustment. If the Court maintains this objection, it would constitute a change in the previously expressed position on the part of Juvenile Court.

Regardless of whether the legislature allows the change in the law this legislative session, the committee believes informal adjustment applied uniformly across the county is in the best interest of juveniles arrested for minor offenses and the community as a whole.

**Recommendation 18:** Institute a youth drug court under the model of the adult drug court

**Responsible:** Juvenile Court of Memphis and Shelby County, County Commission

**Rationale:** According to the CPORT Analysis of the Tennessee Commission on Children and Youth, more than 80% of the case files reviewed showed juveniles before Juvenile Court of Memphis and Shelby County had a substance abuse problem. While drug treatment is often ordered for juveniles, the treatment is generally less intensive than the requirements of Shelby County’s adult drug court.

The Shelby County Adult Drug Court requires defendants to complete a year-long program with regular follow-up with the court, including random drug testing and involvement with Alcoholics Anonymous. Those that successfully complete the program receive no jail time and their records are expunged. The Shelby County Drug Court for adults has a recidivism rate of only 23% and was named a mentor court by the National Association of Drug Courts (*See Shelby County Drug Court website [www.suds.memphis.edu/drugcourt/](http://www.suds.memphis.edu/drugcourt/)*).

With the success of the local adult drug court and the proven success of juvenile drug courts in other jurisdictions, it seems reasonable that a similar system here could yield positive benefits for youth whose delinquency is driven by substance abuse. According

to a 2005 study by the National Drug Court Institute and the Bureau of Justice Assistance, there were 357 juvenile drug courts nationally and 13 in Tennessee. To clarify, a juvenile drug court is a specialized docket within the juvenile court for delinquency cases and some status cases in which the juvenile is deemed to be appropriate for drug court (*See West Huddleston, Karen Freeman-Wilson, Douglas Marlowe, and Aaron Roussell, A Report Card on Drug Courts and Other Problem Solving Courts in the United States, May 2005, [www.ndci.org/publications](http://www.ndci.org/publications)*) (hereafter “A Report Card on Drug Courts”).

However, as recommended by a 2005 study from the Memphis Crime Commission, Juvenile Court of Memphis and Shelby County should move cautiously. The Crime Commission study correctly points out that the differences in drug court models, the lack of long-term data and the fact that youth are developmentally much different than adults are reasons to not overstate the benefits of youth drug courts. This fact was recognized in a 2003 report by the National Drug Court Institute, Bureau of Justice Assistance and the National Council of Juvenile and Family Court Judges. Yet, the report goes on to detail strategies for an effective juvenile drug court based on the successes of other juvenile drug courts (*See Juvenile Drug Courts: Strategies in Practice, March 2003, [www.bja.ncjrs.org/publications](http://www.bja.ncjrs.org/publications)*).

Finally, a bulletin from Juvenile Accountability Incentive Block Grants Program details the “Indicators of Need” for communities to determine if they need a drug court. (*See JAIBG Bulletin, “Juvenile Drug Court Programs” May 2001*). The bulletin identifies the following:

- The extent to which delinquency is associated with drug and alcohol abuse;
- The juvenile justice systems ability to address the issue through substance abuse treatment, supervision and other core adolescent and family services and
- The degree of accountability the juvenile justice system provides for both juvenile offenders and service providers.

Consequently, we believe a juvenile drug court is worth the try.

**Recommendation 19:** Pilot a youth gun court modeled after Birmingham gun court

**Responsible:** Tennessee General Assembly, County Commission, Juvenile Court of Memphis and Shelby County

**Rationale:** The pervasiveness of illegal guns in Memphis and Shelby County prompted Operation Safe Community Task Force to call for increased penalties for gun crimes. In addition, County Mayor AC Wharton, Jr. requested and received a \$200,000 grant from the state of Tennessee for Juvenile Court of Memphis and Shelby County to implement a program to electronically monitor juveniles who commit gun crimes. Clearly our law enforcement leaders believe gun crimes are a major concern for the community.

In 1995, the City of Birmingham instituted a juvenile gun court program recommended by the family court judge. Since then the gun court continues to be recognized as a promising program by the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

The program in Birmingham was successful because it had key components already in place. Specifically, judges had the authority to require mandatory detention of juveniles; discretion as to whether to allow diversion; a mandate to review cases within 72 hours and hold trials within 10 days; and access to 30-day boot camps (*See Promising Strategies to Reduce Gun Violence, Office of Juvenile Justice and Delinquency Prevention, 1998*). Juvenile Court of Memphis and Shelby County has the existing infrastructure described with the exception of a boot camp, which is not necessary for effective punishment and rehabilitation. What is necessary, as noted in *A Report Card on Drug Courts, supra*, is intensive supervision by the judge, case workers and probation officers. Other components include gun surrender, bans on gun possession, gun education, random drug-testing, random home visits, and counseling on anger

management and conflict resolution. (See *Huddelston et al., A Report Card on Drug Courts, supra*).

Because of concerns about scheduling, cost and a lack of a substantial body of evidence supporting a gun court's effectiveness, we are recommending that Juvenile Court of Memphis and Shelby County conduct a pilot the program to determine if it is appropriate for Shelby County. With the existing program to electronically monitor juveniles, the gun court pilot program would be an appropriate compliment and likely be eligible for state, federal and/or private grant funds.

**Recommendation 20:** Establish task force with bar associations to develop proposal for recruitment of more juvenile panelists.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** According to an op-ed written by Judge Person on February 24, 2007, the court appoints counsel to 89% of the juveniles in delinquency, dependency and neglect matters , and 11% have private counsel (See *Person, Curtis, "Prosecutors of Juvenile Court Lack Evidence," The Commercial Appeal, February 24, 2007*). In other words, 100% of juveniles have legal representation in delinquency, dependency and neglect matters. However, a 2005 study by the Tennessee Administrative Office of the Courts states that Juvenile Court of Memphis and Shelby County appoints counsel only 3% of the time in dependency matters (See *Nyasha Justice and Leslie Kinhead,, "A Re-Assessment of Tennessee's Judicial Process in Foster Care Cases" June 2005, Page 71*). Five consecutive annual "CPORT" analyses by the Tennessee Commission on Children and Youth made similar findings, citing the "substantial lack of/virtually no evidence of effective legal advocacy for children or families," (See *Tennessee Commission on Children and Youth, Children's Program Outcome Review Team (CPORT), System Observations, Memphis/Shelby County, 2000, 2001, 2002, 2003, 2004*) . The committee is at a loss to explain the massive discrepancy between the court and these two independent organizations.



However, using the court's statement that it appoints counsel to 89% of the juveniles before the court, then approximately 18,000 juveniles receive appointed counsel. There is one Juvenile Defender and approximately 13 juvenile panelists – lawyers who agree to represent indigent juveniles. If cases were divided equally among these attorneys, each would have a caseload of nearly 1300 cases. It is hard to imagine that most juveniles are receiving effective legal representation when one considers both the extent of the per-lawyer caseload and the fact that the 13 panelists each have a private practice caseload.

According to the Administrative Office Courts (AOC), one of the reasons there are not more juvenile panelists is that the reimbursement by the state is too low. After a 1997 study, the AOC requested that the reimbursement be increased and it was. The AOC recommended an increase in 2005, but to our knowledge that increase has not occurred.

A task force of attorneys, judges and Juvenile Court of Memphis and Shelby County professionals could further study the issue, make recommendations and develop a strategy for gaining AOC and/or state legislative approval for necessary changes. The committee understands that this is a complex problem, but believes strongly in effective legal representation for juveniles and that the task force would be an initial step in improving their circumstances.

**Recommendation 21:** Insist that adjudication hearings be held within the state mandate of 30 days

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** As previously referenced, a 2005 study by the AOC indicated that Juvenile Court of Memphis and Shelby County, as required by law, holds adjudicatory hearings in delinquent matters within 30 days. Unfortunately, the same study stated that Juvenile Court of Memphis and Shelby County holds adjudicatory hearings in dependency cases only 5% of the time within the statutorily-required 30 day time period (*See Nyasha*

*Justice and Leslie Kinkead, “A Re-Assessment of Tennessee’s Judicial Process in Foster Care Cases” June 2005, Page 47).* The AOC study reports that the county bears the cost of housing a child in detention, but the state bears the cost for housing dependent children. The study also reports that the primary reason adjudicatory hearings are not held within 30 days is because of scheduling conflicts with attorneys.

The number of indigent juveniles and the small number of attorneys who are a part of the juvenile panel coupled with the above statement regarding scheduling difficulties for attorneys seem to all play a role in the inability of Juvenile Court of Memphis and Shelby County to meet this state requirement. It would also seem reasonable that a serious effort to hear all of these cases within 30 days could require additional hearing officers to meet the legally-mandated standard.

**Recommendation 22:** Insist that specific findings of fact be done in adjudicatory orders

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** By state law (*TCA 37-1-129 (a)(1)*), there must be an evidentiary hearing to determine if a child is dependent or if the child has committed a delinquent or unruly act. These facts are to be placed in the court’s order specifying the facts proven to arrive at the finding. In the previously referenced AOC study, it was found that Juvenile Court of Memphis and Shelby County orders had specific findings of fact in the case file less than 50% of the time (*See Nyasha Justice and Leslie Kinkead, “A Re-Assessment of Tennessee’s Judicial Process in Foster Care Cases” June 2005, Page 49*). It is unclear whether the findings of fact were not done or whether they simply have not been included in the case file. In either instance, the court should immediately comply with the law, ensure a hearing to determine the facts is conducted and place those facts in the case file.

**Recommendation 23:** Insist that due process is followed in delinquency and dependency matters, including allowing defendants to present witnesses, cross examine witnesses and have an adequate opportunity to consult with counsel

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** On September 14, 2000, Criminal Court Judge Chris Craft granted a Writ of Habeas Corpus in the matter of *Jonathan Seth Arnett v. Herbert Lane* and ordered Juvenile Court of Memphis and Shelby County to hold a detention hearing for Arnett pursuant to the Tennessee Rules of Juvenile Procedure the following day. The facts of the case indicate that the juvenile was not informed of all of his rights, was not allowed to confront and cross-examine his accusers and was not permitted to present relevant evidence on his behalf. Judge Craft stated that “absolutely no competent evidence whatsoever was presented at the hearing, either for the state or the petitioner (*See Jonathan Seth Arnett, Petitioner vs Herbert Lane, Respondent, Order Granting Conditional Relief on Writ of Habeas Corpus*).

Anecdotally, the committee has heard from the judiciary, local attorneys and litigants that the same practices described in the Arnett v. Lane case continue at Juvenile Court of Memphis and Shelby County despite Rule 15 of the Tennessee Rules of Juvenile Procedure and the order entered by Judge Craft. Additionally, most juvenile defendants are not provided sufficient opportunity to meet with their appointed attorneys. Whether this is because of the schedules of the attorneys or unofficial court policy is unclear. However, it is directly related to the issue of adequate and effective legal representation, previously mentioned, and due process discussed here.

**Recommendation 24:** Provide educational programs for all children in detention

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** Unlike adult courts, the mission of Juvenile Court of Memphis and Shelby County is the rehabilitation of the juvenile. For that reason, we believe it is imperative that detained juveniles receive appropriate educational programming. The committee recognizes that Juvenile Court of Memphis and Shelby County is not required to offer these programs but congratulates the court for its collaboration with Memphis City Schools, which allows some juveniles to continue their schooling. We encourage the Court to continue this practice, expanding it beyond the Memphis City School system as necessary. The County Commission stands ready to consider appropriate funding to allow for this to occur.

## Dependency, Abuse and Neglect

Last year, there were more than 19,000 delinquency, dependency, abuse and neglect cases processed by Juvenile Court of Memphis and Shelby County. Of those more than 4,500 resulted in outcomes in which juveniles were removed from their current living situation and placed with a city or county agency, placed with the state Department of Children Services or placed with another relative (*See Tennessee Council of Juvenile and Family Court Judges, Summary Report, 2006, [www.state.tn.us/tcjcj/2006%20Summaries/Shelby.pdf](http://www.state.tn.us/tcjcj/2006%20Summaries/Shelby.pdf)*).

According to the annual review by the Tennessee Commission on Children and Youth, known as CPORT, there are many issues impacting the well-being of children in the child welfare system in Shelby County. Particularly related to Juvenile Court of Memphis and Shelby County are the issues of inadequate legal representation; lack of Guardians Ad Litem (GALs) and Court Appointed Special Advocates (CASA) for all children; incomplete or non-existent permanency planning for children and uniform needs assessment for both custodial and non-custodial parents. The CPORT analysis also pointed out that more than 80% of all children have a substance abuse or mental health problem or their parents have a substance abuse or mental health problem (*See Tennessee Commission on Children and Youth, Children's Program Outcome Review Team (CPORT), System Observations, Memphis/Shelby County, 2000, 2001, 2002, 2003, 2004*).

Cause for further concern is the fact that the Department of Children's Services recently filed a Writ for Certiorari Supercedence in Circuit Court to compel Juvenile Court of Memphis and Shelby County to appoint GALs and counsel for parents immediately and 100% of the time (*See Transcript, Juvenile Court Ad Hoc Committee, February 28, 2007*). While DCS indicates that things have improved, the previously mentioned CPORT analysis and the AOC study indicate that the appointment of counsel is still a concern.

**Recommendation 25:** Remove the Guardian Ad Litem Chief Counsel from the court and make the GAL independent of the court

**Responsible:** County Commission; Juvenile Court of Memphis and Shelby County

**Rationale:** While the court will always have the authority to appoint the Guardian Ad Litem, having authority over the GALs paycheck is a potential conflict. Because the child's well-being is paramount, the GAL should always have the freedom to vigorously represent what he or she believes is in the best interest of the child.

Like the Juvenile Defender, the Guardian Ad Litem Chief Counsel at Juvenile Court of Memphis and Shelby County works with a panel of attorneys appointed by the court to represent the children (*See Transcript, Juvenile Court Ad Hoc Committee, December 13, 2006*). The committee's concern is not with the very able GAL currently employed by the court or any of the outside attorneys who assist. The committee simply believes that judicial ethics and the best interests of the children are best served by placing the Guardian Ad Litem Chief Counsel somewhere within the county administration.

**Recommendation 26:** Insist that individual Guardians Ad Litem be promptly appointed in all required cases

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** Tennessee Juvenile Procedure Rule 39 requires the appointment of individual GALs in proceedings resulting from a report of harm and in termination of parental rights proceedings. According to the AOC study, only 20% of children requiring a GAL were appointed a GAL by Juvenile Court of Memphis and Shelby County. The study also showed Shelby County had the lowest rate of appointing counsel for indigent mothers and fathers -3% & 1%- (*See Nyasha Justice and Leslie*

*Kinthead, "A Re-Assessment of Tennessee's Judicial Process in Foster Care Cases" June 2005, Page 72).* These findings are consistent with the CPORT analysis that showed a lack of adequate legal representation and that most case files lacked evidence of an appointed GAL or CASA worker. Further supporting these independent reviews is the testimony of parents at public hearings, e-mails and phone calls that indicate that neither children, nor their parents, are represented by counsel.

**Recommendation 27:** Insist that culturally sensitive assessments be made for all youths. Require a uniform needs assessment for custodial and non-custodial juveniles.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** Eighty-six percent of the juveniles who come before the court for any reason are African-American. The number of Hispanic children is growing annually. These facts underscore the need to ensure that when assessments are conducted that they are culturally sensitive and that staff administering these assessments are culturally competent (*See Tennessee Council of Juvenile and Family Court Judges, Summary Report, 2006, [www.state.tn.us/tc/jfcj/2006%20Summaries/Shelby.pdf](http://www.state.tn.us/tc/jfcj/2006%20Summaries/Shelby.pdf)*).

However, the frequency with which assessments are conducted is not adequate. In the CPORT analysis, many children deserving of assessments had no record of an assessment in their case files. Because nearly all children coming before the court either have issues with substance abuse or mental illness, or have someone in their families with such issues, uniform assessments must be conducted.

It is worth noting that the addition of Dr. Ohiana Torrealday, with the court's Office of Clinical Services, is an important step in the right direction. The court has also noted the increasing diagnosis of mental illness and appears to be working to address these concerns.

**Recommendation 28:** Require permanency plans be done for all dependent youth.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** TCA 37-1-166 is known as the Reasonable Effort portion of Title 37. The Permanency Plan fulfills that requirement in that it is indicative of DCS effort to work with parents and children to, if possible, reunite them. DCS has a policy of completing that plan within 30 days of a child being removed from a parent's or guardian's custody. The plan is generally written for 6-12 months and details the steps required to reunite the family. Courts are required to ratify the plan within 60 days and have a permanency hearing every twelve months for as long as the child is in custody (*See Transcript, Juvenile Court Ad Hoc Committee, February 28, 2007*)

According to the CPORT analysis conducted by the TCCY, permanency plans were only available in 50% of the cases reviewed. Without a permanency plan, parents/guardians and children lack a clear plan for reunification. Consequently, the time it takes to reunite a parent and child or to find other permanent living arrangements is unnecessarily prolonged. Juvenile Court of Memphis and Shelby County should comply with the law and Judge Person should insist on a permanency plan for every child.



## Customer Service

The over-riding theme of the Commission's study of Juvenile Court of Memphis and Shelby County has been a lack of old-fashioned customer service. Whether at public hearings, by phone or e-mail, the most common complaints have been about the quality of service at Juvenile Court of Memphis and Shelby County.

A regular complaint was conflicting information from Juvenile Court of Memphis and Shelby County employees within the same department. A close second was lost records and files resulting in Juvenile Court of Memphis and Shelby County clients having to complete the same stack of complex forms multiple times. Caseworkers who would not return phone calls or who were rude and unhelpful were recurring themes. Rarely did any citizen know the name of their caseworker and in most instances dealt with multiple people.

Probably most disturbing were multiple instances of caseworkers and other administrative staff providing legal advice to litigants. In one instance, a mother was told to quote "not push her luck" when she wanted a child support modification after learning her child's father was earning more than previously thought (*See Transcript Juvenile Court Ad Hoc Committee Public Hearing, January 23, 2007*) In another instance, a father sought a de novo appeal and was told by a Juvenile Court of Memphis and Shelby County employee not to waste his time that it wouldn't be granted (*See Transcript, Juvenile Court Ad Hoc Committee, Public Hearing, February 1, 2007*).

On a positive note, the creation of the advocate for non-custodial parents was recognized by the constituents and by committee members as a sound and effective management decision (although we would prefer in the future that all such positions be advertised before being filled.) According to Juvenile Court of Memphis and Shelby County, the

office assisted 1,000 non-custodial parents within the first few months of its existence  
(*See Transcript, Juvenile Court Ad Hoc Committee, December 13, 2006*)

**Recommendation 29:** Expand customer service philosophy

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** The transcripts from public hearings make the case for an expanded customer service philosophy. The specific recommendation from the committee includes bringing on a management consultant. Other recommendations include:

- Large, visible name tags on all employees;
- I.D. badges for attorneys who regularly practice there, to speed up access;
- Installing phone mail for all employees;
- Recording phone calls for quality control;
- Computerizing all filings and data on child support matters;
- Making such files and data available to all employees; and
- Establishing a first-floor customer service desk or process.

**Recommendation 30:** Establish customer-friendly website with all necessary forms with complete and simple instructions about how to complete those forms

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** In light of the customer service lapses discussed in this report, it is imperative that access to court information be improved. Juvenile Court of Memphis and Shelby County recently launched its website and counters that its website contains all the necessary forms. The court is correct that all the forms are contained on

the site, and we commend the Court for this effort. But there are no instructions for pro se litigants or provide any direction as to when or in what circumstances the forms are to be filed (*See Web site, [www.juvenilecourt.shelbycountyttn.gov](http://www.juvenilecourt.shelbycountyttn.gov)*). We recommend that the Court add such instructions and directions to its website.

**Recommendation 31:** Add at least two attorneys to work under and assist the Advocate for non-custodial parents.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** As referenced, the Advocate for non-custodial parents is a bright spot in the customer service philosophy of the court. However, the very large number of cases already handled by that office and the complaints of non-custodial parents warrant the increased staffing. Juvenile Court of Memphis and Shelby County recently reported that it plans to increase administrative staff in office. While that may be necessary, licensed attorneys who can answer legal questions for pro se litigants are needed as well to more effectively serve the public.

**Recommendation 32:** Development of pamphlets including website address to be circulated in all government social service offices.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** As already referenced, a lack of understanding of the processes necessary to navigate the Juvenile Court of Memphis and Shelby County maze is pronounced. Creation of pamphlets with easy instructions, website addresses and contact numbers for help could be placed in government offices, particularly those that address social service concerns. This is an easy and relatively cost-effective way to better serve the customers of Juvenile Court of Memphis and Shelby County.

## Civil Rights

The assurance that the civil rights of employees, juveniles and families is paramount to the committee. While we make no specific allegations, testimony at public hearings and private communiqué from citizens to individual commissioners gives us concern.

Therefore, we make the following recommendations to allay our concerns and preserve the integrity of the court.

**Recommendation 33:** Appoint the Equal Opportunity Compliance Office to serve as a Title VI Coordinator to monitor compliance and enforcement of Title VI and Title VII of the Civil Rights Act of 1964

**Responsible:** County Commission

**Rationale:** An area of concern for the committee is ensuring compliance with Title VI and Title VII of the Civil Rights Act of 1964. Some Commissioners have expressed concern about the disparate impact on minorities before the court and the possibility of disparate treatment, though it should be noted that this is vehemently denied by Juvenile Court of Memphis and Shelby County (*See Transcript, Juvenile Court Ad Hoc Committee, January 3, 2007*). Additionally, employees and former employees of Juvenile Court of Memphis and Shelby County have expressed concern about hiring practices, which while only alleged and not proven, deserve to be taken seriously. The Equal Opportunity Compliance office was created to monitor these situations and ensure compliance. The EOC works directly for the County Commission; therefore the EOC is positioned both in terms of mission and reporting function to monitor compliance with the federal civil rights statutes.

**Recommendation 34:** Develop a Title VI implementation plan and present to the General Government, Personnel/Fringe Benefits, Equal Employment Opportunity and Notary Committee of the

Shelby County Board of Commissioners by March 1<sup>st</sup> of each year.

**Responsible** County Commission

**Rationale:** As required by law, Juvenile Court of Memphis and Shelby County currently has a Title VI implementation plan (*See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 142-342*). However, as noted by the committee, that plan should logically be updated as circumstances change within the structure or operations of the court that would impact Title VI compliance positively or negatively. Consequently, the committee is requesting that the plan be submitted to the General Government committee on an annual basis.

**Recommendation 35:** Provide cultural competency and diversity training for all levels of employees including administrative and auxiliary probation officers.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** The mere fact that 86% of juveniles who come before the court and nearly 90% of child support litigants are African-American warrant that Juvenile Court of Memphis and Shelby County staff be culturally competent and sensitive (*See Juvenile Court of Memphis and Shelby County Fact Book, Bate Stamp 889*). Basic cultural competency and diversity training would be cost-effective, and provide critical skills employees need to ensure the best outcome for “customers” of Juvenile Court of Memphis and Shelby County. A recent report by the Annie E. Casey Foundation entitled *Race Matters: Unequal Opportunities for Juvenile Justice* recommends cultural competence for practitioners and agencies as a strategy to promote equal opportunity (*See [www.aecf.org/upload/PublicationFiles/fact\\_sheet12.pdf](http://www.aecf.org/upload/PublicationFiles/fact_sheet12.pdf)*).

**Recommendation 36:** Create culturally competent speakers bureau for children in detention.

**Responsible:** Juvenile Court of Memphis and Shelby County

**Rationale:** Of those juveniles adjudicated in delinquency matters at Juvenile Court of Memphis and Shelby County, 8266 were African-American, which represents 85% of all delinquency matters. A previous recommendation in this report called for educational programs for detained juveniles. This recommendation builds on the previous one recognizing the importance of putting African-American role models and culturally-sensitive speakers before juveniles in detention.

**Recommendation 37:** Establish Disproportionate Minority Contact subcommittee to the County Commission Law Enforcement Committee and request that Governor Bredesen appoint the chair of the local DMC Taskforce to the statewide DMC Taskforce.

**Responsible:** County Commission

**Rationale:** Disproportionate Minority Contact (DMC) and Confinement was a significant point of study for the committee. The committee heard testimony from John Hall, chair of the local DMC task force and some committee members attended the DMC taskforce's conference at which Bart Lubow with the Annie E. Casey Foundation spoke. While there is much to be said about DMC, one of the most salient points is that overrepresentation of minorities is pervasive throughout the criminal justice system. With that in mind, the committee believes that ongoing discussion and policy development to address the issue is required. The subcommittee will look beyond just DMC as it relates to Juvenile Court of Memphis and Shelby County and work to develop policies to reduce the overrepresentation of minorities throughout the law enforcement, judicial and corrections communities in Shelby County.

## Mental Health

The issue of the mental health of the children and families that come before Juvenile Court of Memphis and Shelby County is a growing problem. The increasing diagnosis of juveniles with mental health issues was noted in the TCCY CPORT analysis, recognized by Juvenile Court of Memphis and Shelby County in a 2001 mental health strategy developed by the Consilience Group, and referenced on multiple occasions by juvenile justice practitioners who appeared before the committee. Unfortunately, the committee was unable to address mental health to an extent that would allow for multiple, meaningful recommendations. Therefore, we make the following recommendation:

**Recommendation 38:** Establish Mental Health subcommittee to Hospitals and Health Committee to address mental health issues in the criminal justice system.

**Responsible:** County Commission

**Rationale:** As discussed above, the issue of mental health within the criminal justices system must be addressed. A subcommittee with that specific mission can study the issue in more detail and suggestion policy initiative to improve the situation. The subcommittee will also help to raise the profile of the mental health situation in Shelby County.

## Conclusion

The Committee recognizes that not all of these recommendations can be implemented immediately. Further, in some cases, the recommendations interact with each other. For example, moving to a court with more than two judges (Structure, Recommendation 1) would allow for easier implementation of the “one family, one judge” system (Structure, Recommendation 6) which in turn would undercut the utility of moving to separate “civil versus criminal” divisions within the court (Structure, Recommendation 5). In all cases, however, the Committee urges the responsible parties to consider seriously the relevant recommendations and implement them in the quickest feasible manner. Doing so will in some cases require further dialogue with the County Commission. The Committee is confident that the Commission as a whole stands ready to engage in such dialogue and to work cooperatively with Juvenile Court to do what is best for the children of Shelby County.



## Appendix A

### Ad Hoc Committee Meeting Schedule

I. November 29, 2006

II. December 13, 2006

III. January 3, 2007

IV. January 17, 2007

V. January 31, 2007

VI. February 14, 2007

VII. February 28, 2007

VIII. March 9, 2007

IX. March 21, 2007

X. April 2, 2007

Xi. April 16, 2007

## Appendix B

### Public Hearing Schedule

- I. December 2, 2006  
Bloomfield Baptist Church  
121 S. Parkway West
- II. December 5, 2006  
Bethlehem Missionary Baptist Church  
918 Looney Street
- III. December 13, 2006  
Berean Missionary Baptist Church  
1666 East Raines Road
- IV. January 23, 2007  
Cordova Branch Library  
8457 Trinity Road
- V. January 29, 2007  
Benjamin Hooks Central Library  
3030 Poplar Avenue
- VI. February 1, 2007  
Hickory Hill Community Center  
3910 Ridgeway Road

## Appendix C

### Juvenile Justice & Child Welfare Practitioners

Jeune Wood  
Chief Administrative Officer  
Juvenile Court of Memphis and Shelby County

Larry Scroggs  
Chief Counsel  
Juvenile Court of Memphis and Shelby County

Mitchell Morgan  
Director of Child Support Services Division  
Juvenile Court of Memphis and Shelby County

Sheldon McCall  
Referee  
Juvenile Court of Memphis and Shelby County

Bill Gibbons  
District Attorney General  
Shelby County

Teri Fratesi  
Assistant District Attorney  
Chief Prosecutor at Juvenile Court

Art Quinn  
Criminal Defense Attorney  
Memphis Bar Association

Fenton Wright  
Vice President  
Memphis Leadership Foundation/MAARS

Eldridge Jefferson  
City Attorney, Memphis  
President-Elect Ben F. Jones Chapter of Memphis Bar Association

Mike Adams  
Assistant Commissioner for Child Support  
Department of Human Services

John Hall  
Chair, Disproportionate Minority Contact Task Force  
Shelby County

Mildred Lawhorn  
Department of Children's Services Executive Director for Regional Service West

Merline Hyman  
Department of Children's Services Regional Administrator for Shelby County

Stacy Miller  
General Counsel  
Department of Children's Services

Keisha Walker  
Executive Director  
Court Appointed Special Advocates (CASA)

Robert Jones  
Public Defender  
Shelby County

Debra Wilson  
Attorney representing Martin Ursery

## Appendix D

### Shelby County Attorney Opinions

- I. Shelby County Government's Ability to Utilize, and Requirements for Establishment of, a Second Division of Juvenile Court, Op. No. 06-071 (September 26, 2006)
- II. Method of Administration of Juvenile Court with Second Division of Court, Op. No. 07-006 (January 12, 2007)
- III. Review of Judicial Ethics Committee Advisory Opinion No. 98-5 and Tennessee Attorney General Opinion No. 01-116, Op. No.07-007 (January 23, 2007)
- IV. Constitutionality of the Initial Hearing of Cases By Appointed Juvenile Court Referees as Opposed to Elected Judges Where the Penalty Authorizes Incarceration or Deprivation of Liberty, Op. No. 07-011 (February 16, 2007)
- V. Opinion to Board of County Commissioners Regarding the Method For the Implementation of the Second Division of Juvenile Court, Op. No. 07-036 (February 21, 2007)
- VI. Funding of Public Defender for Representation of Juveniles and/or Adults Under the Jurisdiction of the Juvenile Court of Memphis and Shelby County, Op. No. 07-024 (March 28, 2007)
- VII. Administration of Juvenile Court Child Support Program by Tennessee Department of Human Services, Memorandum (April 27, 2007)
- VIII. Authority of Juvenile Court Judge to Unilaterally Terminate Shelby County's Grant Agreement with the Tennessee Department of Human Services for Funding

- of the Child Support Program for Shelby County, Op. No. 07-029 (April 30, 2007)
- IX. County Employee as a Registered Agent for a Non-profit Corporation, Op. No. 07-031 (April 30, 2007)
- X. Authority to Supervise Juvenile Court Probation Officers, Youth Services Officers and/or Probation Programs, Op. No. 07-032 (May 4, 2007)
- XI. Conversion of Juvenile Defender Position to Coordinator of Defense Panel for the Juvenile Court of Memphis and Shelby County, Op. No. 07-033 (May 10, 2007)